



## DEPARTMENT of GAME, FISH, AND PARKS

Division of Wildlife – Regional Office

4130 Adventure Trail

Rapid City, South Dakota 57702-0303

June 19, 2017

Valois Shea

U.S. EPA Region 8

1595 Wynkoop Street

Denver, Colorado 80202-1129

RE: Public Notice: Administrative Record for the Dewey-Burdock Class III and Class V Injection Well Draft Area Permits

Dear Valois,

South Dakota Department of Game Fish, and Parks (GF&P) reviewed information provided in the *Public Notice: Administrative Record for the Dewey-Burdock Class III and Class V Injection Well Draft Area* and "Additional Administrative Record Documents." Agency comments result exclusively from evaluation of the analysis found in the Additional Administrative Record Documents and specifically the *Draft Cumulative Effects Analysis* (Administrative Record). Our evaluation identifies issues listed below.

- South Dakota Mine Permit
- Avian management planning
- Affected environment
- Species of state concern
- Waste disposal options
- Process pond mitigation

### South Dakota Mine Permit

Wildlife mitigative strategies presented in the Administrative Record are tiered to Powertech's proposed mine permit. EPA must recognize Powertech has only applied for a state mine permit. The proposed state mine permit application has no state standing. Under the SD Mined Land Reclamation Act (SD Codified Law Chapter 45-6b), the Board of Minerals and Environment (BME) is charged with issuing state permits and requirements for ISR facilities. In November of 2013, the BME discontinued hearings on Powertech's proposed state mine permit application until other state and federal agencies finalized their respective permitting. Powertech proposed mine permit application is still pending and no state mine permit exists. The Administrative Record must not reference a state large scale mine permit.

### Avian Management Plan

The Administrative Record identifies an avian management plan. At this time, the management plan is conceptual, has not undergone agency review and essentially does not exist; therefore the extent and effectiveness of mitigation cannot be substantiated.

The Dewey Burdock Project proposes a plan to mitigate impacts to avian species during operations, however, special emphasis is given to bald eagles. Monitoring wells, a processing plant, production well fields, disposal facilities, and a supply water well are all currently proposed within a buffer established for an active bald eagle nest. During the life of the project, seasonal restrictions and unspecified mitigative measures are proposed for the facilities. The Administrative Record does not analyze the viability of seasonal mitigation measures on continuously operated facilities. Analysis also does not consider the questionable effectiveness of seasonal mitigation during times of urgent maintenance or situations requiring emergency repairs on continuously operated facilities. Mitigation measures also rely on individual eagle tolerance; as tolerance is known to vary greatly among individuals. Unsuccessful mitigation risks a disturbance take. Analysis in the Administrative Record does not recognize the necessity of bald eagle take permitting.

Administrative Record fails to recognize or establish the relationship between the site's prairie dog colonies and avian management. The site's prairie dog colonies are the presumed forage base and home range for bald eagles and other avian species. The Administrative Record does not describe the project's direct and cumulative effects on prairie dog colonies, and collateral impacts on bald eagles and other avian species.

Authorization of UIC activities on the site provides a reasonable risk of unpermitted bald eagle disturbance take. Seasonal mitigation in the discernible method of nesting bald eagle protection but USFWS take permitting is done "only" if necessary. Obtaining a permit out of necessity implies a response to a situation that may already has constituted disturbance or take. Operation of UIC permits in important bald eagle habitat, and the uncertainty associated with a seasonal mitigation strategy at a continuously operated facility will result in the probability of take. The Administrative Record does not assess the probability of bald eagle take during project operation.

### Affected environment

The Administrative Record does not include the site's available wildlife data in describing impacts to ecological resources. Scant use of citations in the Administrative Record makes it difficult to determine what available wildlife study data is used to describe the affected environment. It is reasonable to believe that wildlife data is only as current as the date of application. However it must be noted that it has been almost 10

years since the EPA has started its UCI evaluation. During that time, new wildlife and habitat data have enhanced understanding of the site's ecological conditions. Also, recently listed ESA species may exist on site. The Administrative Record did not adequately describe the affected environment or impacts to ecological resources.

Additional wildlife information includes:

**Prairie dog colonies:** The initial baseline wildlife survey documents only 3 of the 7 prairie dog colonies known to exist in the wildlife study area. The significance of the ecologic function of both the existing and newly identified prairie dog colonies is unknown. Direct and cumulative UIC impacts on prairie dog viability are not considered in the Administrative Record.

**Bats:** The USFWS ESA listing of the Northern Long-eared Bat is a significant change since permitting began on the Dewey Burdock Project. The Administrative Record does not address the recent ESA listing or the habitat potential of the project area's historic mine workings.

**Burrowing owls:** Recent wildlife surveys by Powertech have identified burrowing owls use in one of the project area's prairie dog colonies. The extent of burrowing owl use at the site's existing or newly discovered colonies is unknown.

**Bald eagle:** The bald eagle nest identified in the initial wildlife survey is no longer in use, but an alternated nest is now the primary nest site. Powertech proposes construction and facility operation within active bald eagle nest buffers. The Administrative Record does not consider bald eagle disturbance take resulting from project effects on forage areas and home range.

**Reptiles and amphibians:** The rationale to determine impacts to short-horned lizard on page 149 of the Draft Cumulative Effects Analysis is unfounded. The rationale presumes that native prairie, the preferred habitat of lizards, does not exist on rangelands and since impacts are on rangelands, lizards will not be impacted. The rationale originates from Section 6.0 'Impacts To Land Use'. Baseline study from the project identifies native vegetation and "widespread occurrence" of an unknown lizard species. The Administrative Record does not identify native vegetation, cumulative effects of conversion of native vegetation, or direct impacts on lizards.

#### Species of state (South Dakota) concerns

Section 14.2, "Species of State and Tribal Interest: The Short-Horned Lizard" does not describe species of state interest. For a complete listing of state threatened, endangered or rare species see: <http://gfp.sd.gov/wildlife/threatened-endangered/> .

### Waste disposal options

The Administrative Record does not analyze the potential for combined disposal methods (deep well and land application), or the potential for onsite disposal of wastes produced off site. Section '10.1 Overview of Operations' in the Class III permit states that Powertech may use land application in conjunction with deep disposal wells or by itself.

### Process Pond mitigation

The Administrative Record is silent on the ecologic impact of process ponds containing toxic solutions or viability of mitigation measures. Section '14.0 Impacts To Ecological Resources' did not include analysis of direct and cumulative impacts to migratory birds and bats exposed to toxic solutions contained in the projects process related ponds.

If you have question please contact me at any of the numbers listed.

Sincerely



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*The Division of Wildlife will manage South Dakota's wildlife and fisheries resources and their associated habitats for their sustained and equitable use, and for the benefit, welfare, and enjoyment of the citizens of this state and its visitors.*